

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPLICATION (ABA) NO.698 OF 2021**

Naresh @ Pappu s/o Jagdishprasad Shriwastav ..vs.. State of Maharashtra, thr. P.S.O. P.S. Mankapur  
Nagpur (NDPS Cell, Nagpur).

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri A.K. Bhangde, Advocate for applicant.  
Shri H.D. Dubey, A.P.P. for non-applicant/State.

**CORAM : VINAY JOSHI, J.**  
**DATED : 22/12/2021**

Heard.

2. In anticipation of arrest in Crime No.220 of 2021 registered with police station Mankapur for the offence punishable under Sections 8 (c), 20 (b)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act (for short "NDPS Act"), the applicant is seeking for grant of pre-arrest protection.

3. Besides usual grounds, it is canvased that neither applicant was apprehended on the spot nor contraband articles were seized from his possession. It is submitted that the statement of co-accused is not sufficient to involve applicant in crime. Moreover, it is stated that though there were some previous offences against the applicant however, in one of them he has been acquitted. The State resisted bail by filing reply-affidavit by which the prosecution case in brief has

been narrated. Moreover, it is stated that the applicant was in constant touch with co-accused at relevant time. The applicant is a main supplier and indulging into the narcotic activities. He is habitual offender against whom two prior crimes are registered.

4. Heard both the sides and perused case diary. On receipt of secret information, the police have intercepted a Swift Dezire Car driven by one Sohail Khan accompanied by Sunil Malvi. On suspicion, police took search and found contraband articles namely Ganja kept in the dicky stored in two gunny bags. The police have seized said contraband weighing 35.390 kg. which is of commercial quantity. Necessary samples were taken for examination. During inquiry, co-accused disclosed that they have brought contraband articles namely Ganja from the applicant Naresh Shrivastav.

5. Perusal of case diary indicates that a contraband article of commercial quantity was seized under panchanama. The police took lead from co-accused that the seized Ganja was supplied by the applicant. Copies of C.D.R. have been produced to prima facie satisfy that applicant was in contact with co-accused. Merely because, the applicant was not present on the spot that by itself is no sufficient ground to grant bail. The applicant's learned Counsel by placing reliance on the decision of this Court in

case of *Pavan Balkrushna Kshirsagar Vs. The State of Maharashtra in Anticipatory Bail Application No.2710 of 2021* urged for bail. It is argued that in identical situation, this Court has granted pre-arrest protection to the then applicant. Though, the case in hand has certain resemblance, however, each bail application has to be decided on its own merits. The prosecution has specifically brought on record that two prior crimes under the NDPS Act were registered against the applicant. While considering application under Section 438 of the Code of Criminal Procedure, the prior crimes is also a matter for consideration.

6. The prosecution has produced a chart showing two prior offences. It reveals that a crime for the offence punishable under Sections 20 and 29 of the NDPS Act was registered in the year 2015 and in the year 2019 against the applicant. Though, it is stated that the applicant is acquitted in a case registered at Kalmana police station, however, the fact remains that this is third crime registered against the applicant that too under the NDPS Act. In this regard, applicant's learned Counsel by placing reliance of the decision of *Manoj Prabhakar Lohar Vs. State of Maharashtra* reported in *2009 ALL MR (Cri) 2883* would submit that only on account of bad antecedents, liberty cannot be curtailed. As stated above, entitlement of accused for grant of bail is to be independently considered on the fact of each case. The

said decision relates to offence under Indian Penal Code. In case at hand, the applicant's direct nexus with the seized articles was disclosed on the date of occurrence itself. It is a matter of investigation to ascertain the exact role of the applicant. The special statute has been introduced to curb social menace of narcotics. Particularly, after frequent intervals, similar type of crimes were registered against the applicant. Having regard to all above facts, it is not a fit case to grant pre-arrest protection. In view of that application stands rejected.

**JUDGE**

*R.S. Sahare*